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ABSTRACT

This guide presents the Massachusetts eligibility guidelines to qualify a school age child with special needs to receive special education services. The guidelines are intended to aid in determining what a disability is and the relationship of the disability to determining whether the child is "unable to progress effectively in regular education." The guidelines also explain the role of the assessment process. After an introduction, the first section focuses on the role of the educational system in meeting the needs of all students. It discusses student development, curriculum and instructional practice, prereferral strategies, professional development, and family education and involvement. The next section focuses on the specifics of eligibility determination and covers: (1) assessing the student within regular education; (2) special considerations in assessing young children, children with different linguistic/cultural backgrounds, children with chronic health problems, and children involved with social service agencies or the courts; (3) definitions; (4) the relationship between disability and the inability to progress effectively in regular education; and (5) reaching a decision about eligibility for special education. The last section considers placement decisions in the context of Section 504 of the Rehabilitation Act. Appendices provide lists of regular education resources (containing 17 references), assessment responsibilities under Chapter 766 regulations, and evaluation safeguards. (DB)

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ELIGIBILITY GUIDELINES FOR SPECIAL EDUCATION

Massachusetts
Department of Education
September 1992

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The Division of Special Education

Pamela Kaufmann, *Director*
Bureau of Program Audit & Assistance

Dianne Curran, Esq.
Legal Office

Prepared under contract to the Massachusetts Department of Education by: Greater Lawrence Educational Collaborative
Lawrence, Massachusetts

Alice Donahue, *Co-Author*

Shelley Gross, *Co-Author*

Roseann Tully, *Editor*

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I. Introduction

Background

In July 1972, Governor Francis Sargent signed into law Chapter 766 of the Acts of 1972, the Massachusetts special education law. The preamble to this law is instructive in indicating the legislative intent of Chapter 71B: "The act is designed to remedy past inadequacies and inequities by defining the needs of children requiring special education in a broad and flexible manner, leaving it to state agencies to provide more detailed definitions . . . ." The tenets of the law included the responsibility to serve the unserved and underserved, to maximize educational opportunities for children with special needs, and to enable students to become independent members of society. Subsequent amendments to the law made clear that students with special needs should receive services in the least restrictive environment.

Since Chapter 766 was implemented in 1974, the number of students receiving special education services has increased steadily. Policy makers have examined why this growth has taken place. More students have been referred to special education, and more students have been identified as having special needs. The absence of a clear definition of a "school age child with special needs" and the lack of eligibility criteria for special education have been identified as key concerns. These concerns, coupled with the education system's reliance on special education to work with students with diverse learning styles, have led to a reexamination of who is "a school age child with special needs."

The need to develop criteria defining what constitutes a school age child with special needs is well documented. The 1986 report by the Senate Committee on Post Audit and Oversight, *Special Education in Massachusetts: An Overview of Chapter 766 Program Funding and Service Delivery*, called for the establishment of clear eligibility criteria for special education services as well as the publication of distinct guidelines concerning the responsibilities of social and medical agencies and the regular education system in order to define clearly the special education domain.

In August 1991, the Department of Education submitted a report to the Legislature entitled *A Review of the Eligibility Criteria for Children with Special Needs*. This report recommended change in the statutory definition of "a school age child with special needs," the development of statewide eligibility guidelines to ensure clarity and consistency of application of the special education statute across local school districts, and a comprehensive guidelines training program for professionals and parents. The report's recommendations came with an overall statement that adequate fiscal resources must be provided to strengthen the educational system's capacity to meet the learning needs of all students.

In January 1992, Governor William Weld signed into law legislation that amends the definition of a school age child with special needs, as was recommended in the Department's report to the Legislature. The legislation directs the Department of Education to develop amended Chapter 766 Regulations and eligibility guidelines for children with special needs

with a statewide implementation date of September 1, 1992. The new definition in M.G.L. Chapter 71B, section 1 reads as follows:

> **"School age child with special needs**–a school age child who, because of a disability consisting of a developmental delay or an intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination thereof, is unable to progress effectively in regular education and requires special education services in order to successfully develop the child's individual educational potential: provided, however, that no child shall be determined to be a student with special needs solely because the child's behavior violates the school's disciplinary code, and provided that use of the word disability in this section shall not be used to provide a basis for labeling or stigmatizing the child or defining the needs of the child, and shall in no way limit the services, program, and integration opportunities provided to the child."

Purpose of the Guidelines

Together with the Chapter 766 Regulations, the eligibility guidelines are intended to provide guidance to practitioners and parents in identifying students with disabilities in the following ways:

- Establish an understanding of what is a disability and "unable to progress effectively in regular education"
- Explain the role of the assessment process in determining whether a student has a disability and is eligible for special education services
- Provide direction to evaluation TEAM members in establishing the relationship between a student's disability and the student's inability to progress effectively in regular education in order to determine whether a child is in need of special education services.

Many practitioners and parents have expectations that the guidelines will result in a simple formula that will assist in determining eligibility for special education. The task of determining eligibility, however, is a complex one. Making a determination that a student is a child in need of special education is one of the most significant judgments professionals and families will make in the educational life of a student.

There is no simple way to identify students in need of special education. The guidelines are not meant to prevent those students with disabilities who require special education and related services from receiving what they need. The guidelines are meant to ensure that students who are disabled and need special education services are identified and receive special education services, and that those students who are not disabled are not identified as needing special education services.

II. Expectations for the Educational System to Meet the Needs of All Students

Overview

As of October 1991, 17.3% of the public school population in Massachusetts was enrolled in special education, a higher proportion than in other states. It is necessary to examine the high referral of students to special education, as well as the system which is contributing to the large number of students classified as having special needs.

Some students may be placed in special education because of the school's failure to meet learner needs. As a result, some students are placed inappropriately in special education programs and educated out of the mainstream of regular education for all or part of the school day. This practice has been shown to lower academic expectations, increase the student dropout rate, and remove the responsibility from regular education to create a learning environment that meets the needs of all students.

Regular education is the door to learning through which all students are expected to enter; it should be the placement for all students. It is the environment that can enable students to be appreciated for their varied learning styles. It is the educational context to empower all school personnel. It offers a climate in which to celebrate the diversity of all students.

Special education should be viewed as an integral part of the regular education system and a contributor to the education of those students who have special needs. It is only within the framework of regular education that a student can be afforded the broadest range of skills and learning experiences that are essential to his/her development. Both state and federal law ensure that special education services and support can be provided in the regular education classroom. Together, regular and special education can address student learning developmentally by providing: a rich, varied curriculum; instructional practices geared to individual needs; and family education and involvement.

Barriers exist both within and outside the school environment that are identified as factors which may contribute to the large number of students in special education. These barriers include but are not limited to:

- Limited support services and instructional delivery options available within regular education
- Ineffective educational policies and practices, such as large class size
- Prescribed, limited curriculum in regular education
- Nonexistent or ineffective prereferral process and strategies
- Lack of staff time for professional collaboration and problem solving
- Reliance on standardized test data as the primary measure of student learning
- Lack of available social services within the school and the community
- Inadequate child care, health care, and housing opportunities.

Schools can overcome most of the within-school barriers. Barriers to learning alone should not be seen as leading to special education, but instead should signal a need to create a regular education learning environment that accommodates individual student needs.

With the increase in the number of students receiving special education services has come a belief that regular education can no longer do the job of ensuring that all students progress effectively. However, a reinvestment in regular education would ensure less of a dependency on referring students for special education. Some of the barriers that are noted above—curriculum and instructional practice, professional development, and the prereferral process and strategies—are within the domain of the school environment and are discussed further. If these barriers are overcome, the number of students inappropriately referred to special education would decrease.

Student Development

School communities must believe and expect that all students can learn. By accepting the premise that the regular education environment is the educational environment where all students learn, a school climate is developed that ensures student learning. When there is little acceptance of variations of student learning, the result is a tendency to find something wrong with the student and to fragment the services provided to the student. When school personnel and families hold high expectations for student learning and appreciate student diversity, schools can deliver quality education to all students. With high expectations comes respect for different approaches to learning—recognizing cultural and linguistic considerations, special needs, and developmental variations. We should not assume that students need special education based *solely* on limited English proficiency or noncompliant behavior exhibited in the school. The following expectations about learners help prevent unnecessary and inappropriate referrals to special education and other pull-out programs:

- All students have different rates and styles of learning.
- All students are diverse in their cognitive, physical, linguistic, social, and emotional development.
- All students differ in their current skill level to work and study independently.
- All students experience at various times different reactions and responses to curriculum and instructional task demands.
- All students require different amounts of supervision and instruction.

Curriculum and Instructional Practice

Curricula and instruction which are geared to the individual student's developmental levels and respect cultural and linguistic differences result in increased student learning. Curricula and instructional practice which are effective in meeting a range of student abilities include (but are not limited to):

- Active and varied participatory learning
- Ongoing modifications of tasks, skills, and materials

- Developmentally appropriate, culturally and linguistically sensitive materials
- Content inclusive of: the requirements for successful entry into adult living; academics, the arts, health education, physical education; affective skills and problem solving skills
- Specific objectives and goals with clear expectations for learner performance
- Test and assessment results and portfolios of student work to examine the effect of the curriculum and instructional practice on students' progress
- Supplementary resources and services provided within the regular class setting before offering them in a pull-out setting
- A variety of grouping strategies that reflect the philosophy of heterogeneous grouping of students and the discouragement of tracking, grade retention, or labeling of students
- Disciplinary actions that minimize the loss of educational opportunities for students and that enable students to remain in school
- Cooperative learning and peer tutors
- Co-teacher and team teaching models including collaboration to assist learners and teachers with provision for common planning time
- Instruction in the language the student understands best until the student can perform classroom work in English at a level comparable to his/her peers.

Prereferral Strategies

If a student experiences difficulty in a regular education program ". . . the principal of the child's school shall ensure that all efforts have been made to meet such child's needs within the regular education program." Although the right to refer a child to special education cannot be circumvented at any time, the implementation of prereferral strategies is an opportunity to prevent student failure and help the student to succeed in regular education. A well structured prereferral system ensures compliance with the Chapter 766 Regulations. Chapter 766 ¶309.0 states:

> **"Prior to referral of a child for an evaluation the principal of the child's school shall ensure that all efforts have been made to meet such child's needs within the regular education program. In addition, all efforts shall be made to modify the regular education program to meet such needs. Such efforts may include, but are not limited to: modification of the curriculum, teaching strategies, teaching environments, or materials; and use of support services, consultative services, and building based teams to meet the child's needs in the regular education classroom. Such efforts and their results shall be documented and placed in the child's record. Nothing contained in this paragraph shall be construed to limit or condition the right to refer a child for an evaluation."**

Depending on the needs of the student, the prereferral process could be as short as four weeks or as long as six weeks. Establishing timelines for reviewing the effectiveness of prereferral strategies enables educators and parents to determine their effectiveness. A review can

establish the success of the implemented interventions, the need to implement other prereferral strategies, the need to make a referral to an outside agency, or the need to make a referral for special education evaluation.

A strong prereferral system enables school practitioners to identify which aspects of the student's educational environment must be changed to ensure learning and success in regular education. Table 1 provides a description of this process. The prereferral system should consist of ongoing systemic efforts to accommodate the student's varied learning style and/or needs within the regular education classroom. It must be viewed as a viable intervention strategy; one that is expected to occur for any student encountering difficulties; and one that is established in every school. Since many students will encounter difficulties in learning, it is essential that modifications in regular education be designed and implemented before making an assumption that a student requires special education.

Critical to the prereferral process is the gathering of information about the learning environment and the individual student. The principal, assistant principal, or (at the secondary level) regular education department heads could assume leadership roles in the assessment of the learning environment. This would lead to a more systemic approach to problem solving and serving students within the regular education environment.

Data collection prior to making modifications to the regular education program might include analysis of curriculum tasks and materials, examples of oral and written directions for tasks, observation of classroom activities, and consultation with teacher(s) and other professionals. Data about the student prior to making modifications might include: information about the student's cultural and linguistic background; guidance files; examples of classroom written work; and ongoing communication with student and family members.

Prereferral efforts will be most effective when parents are involved. It is critical to ensure that parents are informed that prereferral strategies have been implemented for their child. Additionally, parent input is valuable when gathering information about the student, the learning environment, and when making decisions about the best prereferral strategies to implement. Parents' own perspective and their expertise can contribute to the decisions made during the prereferral process. Furthermore, parent support and reinforcement of prereferral strategies in the home environment can increase their effectiveness.

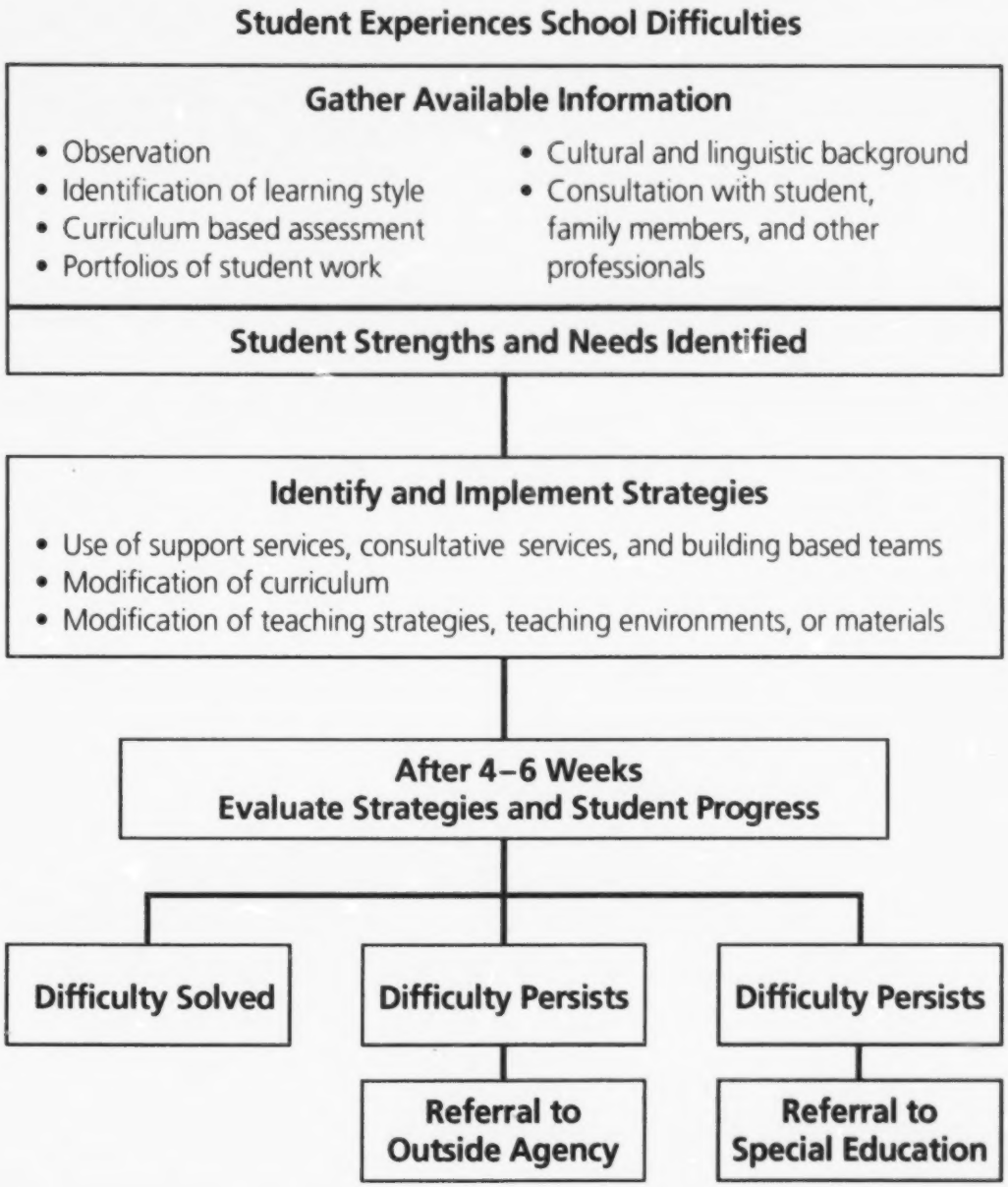
Adaptations considered through the prereferral process are for the most part instructional and/or curricular modifications that do not require a specially trained person, e.g., a special educator, to execute. In some instances, however, a special educator may be helpful in assisting the regular education teacher in identifying the possible source of the problem and the strategies to implement. Effective prereferral strategies, all of which are components of good school practice, include but are not limited to:

Modification of the Curriculum, Teaching Strategies, Teaching Environments or Materials

- A wide variety of curricular and instructional materials including computers, tape recorders, and taped/large print books
- A variety of grouping procedures and texts within the regular classroom

TABLE 1

Prereferral Process


Student Experiences School Difficulties
Gather Available Information
• Observation
• Identification of learning style
• Curriculum based assessment
• Portfolios of student work
• Cultural and linguistic background
• Consultation with student, family members, and other professionals
Student Strengths and Needs Identified
Identify and Implement Strategies
• Use of support services, consultative services, and building based teams
• Modification of curriculum
• Modification of teaching strategies, teaching environments, or materials
After 4–6 Weeks
Evaluate Strategies and Student Progress
Difficulty Solved
Difficulty Persists
Difficulty Persists
Referral to Outside Agency
Referral to Special Education

Nothing should limit the right to refer a student for an evaluation.

- A clear structure for class activities with a limited number of instructions for task completion
- Clear teacher expectations for student performance
- Oral and visual directions for assignments; visual, auditory, and tactile prompts
- Additional time allotted for the completion of written tasks
- Alternative teaching approaches, e.g., incorporation of multisensory activities to reinforce concepts, use of audiovisuals, small group activities
- Alternative testing procedures, e.g., oral testing, fewer test questions
- Preferential seating or other room design modifications
- Contracts, e.g., student/teacher, behavioral
- Immediate and specific feedback about student performance
- Reinforcement of desired student behaviors
- Arrangement of physical space/materials to minimize disruptive movement.

Use of Support Services, Consultative Services, and Building Based Teams

- Use of regular education services, e.g., routine vision and hearing screening programs, Chapter I, remedial reading
- Use of regular education personnel, e.g., school volunteers, student interns, guidance counselors, school adjustment counselors
- Use of consultants, e.g., special education teachers, speech and language pathologists, psychologists
- Use of parents as a resource.

Appropriate strategies should be tried, documented, and analyzed. (Refer to Chapter 766 ¶309.0 regarding documentation and the right of referral for evaluation.) When prereferral activities are implemented properly but are not sufficient to enable the student to progress effectively in regular education, there is a greater indication that the student may have a disability that requires a referral for evaluation.

Professional Development and Family Education and Involvement

In order to develop a successful learning environment for all students, both professional development activities and family education and involvement must be fostered. Administrative leadership is critical in these efforts. Professional development programs should emphasize: the expectation that *all* students can learn; the ability to adapt curriculum, materials, and instructional practice to meet the needs of diverse learners; the application of effective behavior management skills; and the capacity to consult/collaborate with colleagues in order to address diverse learner needs. Professional development programs also should address the cultural and linguistic differences of students and second language acquisition theory.

One instructional strategy that merits attention in a professional development program is that of co-teaching arrangements. The co-teaching model, which involves special educators co-teaching with regular educators in the regular education classroom, has the effect of improving the progress of students with special needs. Additionally, and equally significantly, this arrangement benefits students without disabilities as well. The dual objectives of the regular and special educators work in conjunction with each other to the advantage of all students in the classroom.

Additionally, the success of any school program rests on family education and involvement that makes all families feel included. Enabling families in becoming more involved in the school community benefits everyone—students, school personnel, and families. Further, the role of the community is important in supporting students and families. Collaboration with human services and other community agencies assists in such efforts. Any family education program must pay careful attention to the different cultural and linguistic needs of the families it is supporting and encourage ambitious outreach programs.

For resources that assist with concepts discussed in this section see Appendix A.

III. Determining Eligibility: Who is a Child in Need of Special Education

When a student is referred for special education evaluation, the TEAM must work through a formalized process to decide whether the referred student is eligible for special education. To reach that decision, the TEAM must have an understanding of the definitions of disability, impairments, and effective progress. TEAM members must also understand how assessment data should be weighed and analyzed in reaching a decision about eligibility. The following sections describe the assessment process, provide definitions of relevant terms, and elaborate on the decision making process.

Assessing the Student Within Regular Education

Assessment is a dynamic, fluid, and ongoing process designed to gather information about a student's performance in the context of various environments. The forms of assessment are as varied as the types of behaviors students produce while working in the classroom or socializing on the playground. Systematic observations, work samples, written products, student portfolios, test results, behavioral checklists, and anecdotal records all provide valuable insights about how students function within the school environment. These varied methods of assessment assist teachers in understanding how well students have mastered what they are expected to learn. In the classroom, both formal and informal assessments (i.e., curriculum-based test results, observation of a student's progress) help guide teachers in making instructional decisions.

Referral for special education evaluation suggests that a student is not progressing effectively in regular education and that there is suspicion that a disability is contributing to the learning difficulty. The purpose of assessment in the special education evaluation process is to

gather comprehensive information to explain why the student is not progressing effectively in regular education. Comprehensive assessment includes gathering information about the student and the learning environment. Assessment of the student is essential to determine whether the student has a disability. Since the presence of a learning difficulty is not automatically indicative of a disability, assessment of the learning environment must be given equal consideration.

Given the serious nature and complexity of determining eligibility for special education multiple sources and types of information need to be gathered (see Appendix B, Assessment Responsibilities as Prescribed in Chapter 766 Regulations). Evaluation TEAM members are charged with specific assessment responsibilities to ensure that a comprehensive picture of how the student functions within regular education emerges from the assessment data. This information is essential to the TEAM as they attempt to discern what is contributing to the student's inability to progress effectively. Comprehensive assessment information enables the TEAM to consider the impact of various factors on student performance within and outside the learning environment. Table 2 lists a series of assessment questions and assessment strategies that, depending on the student's suspected area of impairment, may help TEAM members give appropriate consideration to the impact of various factors on student performance.

The prescribed evaluation process requires the TEAM to conduct assessments in all areas of suspected disability. All assessments require parental consent. Each TEAM member should have sufficient prereferral and/or referral information to make an informed decision about how to proceed with the assessment process focusing on student performance within and outside of the classroom. As the TEAM is gathering assessment data about the student, information about the learning environment is also being gathered and analyzed. Norm referenced tests provide data helpful in clarifying how a student learns; however, such tests alone cannot provide the evaluation TEAM with information comprehensive enough to determine eligibility for special education. The evaluation safeguards contained within the regulations (see Appendix C) include the following specific assessment strategies that will prove useful.

- Examine student behavior in the classroom (including adaptive and compensatory behaviors) through systematic observations. Such observations yield the most accurate, functional, and comparative information about how that student is performing in school, including responsiveness to instructional strategies. Observe the student as he/she participates in other areas of the school environment. Obtain information about how the student functions outside of the school environment. Interview the student.
- Examine the classroom to understand the attributes of lessons, activities, and materials and consider what the student is experiencing in his/her learning environment. Review sources of information available to students, the range of instructional resources used, personal relevance of the activities, grouping arrangements, degree of abstraction and/or complexity of materials presented, etc.
- Ask family members if they see evidence of the learning difficulty; if so, what strategies have been used at home to accommodate the difficulty. Gather information about the student's health and school history. Interview others, i.e., those who have pertinent assessment information.

TABLE 2
Questions that May Help Guide the Assessment Process

Questions	Assessment Strategies	Professionals Involved
How does the student perform within/outside of the classroom? mastery of basic academic and social skills quality of work products/test results work habits/organizational skills functioning in small group/whole class activities peer relations strengths/weaknesses	• Systematic observation of student • Student work products • Teacher reports • Anecdotal records • Curriculum-based assessment • Formal/informal test results • Interview with the student	Teachers working with student School Psychologist Specialist in area of suspected disability
Are there gaps in the student's school history? Frequent changes in schools? Erratic school attendance?	• Review of the school history/record • Family interview	Principal School Adjustment Counselor
Does the student come from a linguistically or culturally different background? level of English proficiency in oral/written communication understands directions in English grasps the concepts and nuances of conversation primary language of casual conversation experience with different types of learning tasks child and parent attitude toward primary language student comfort with school culture performs English tasks at same level as primary language	• Language assessment by assessor fluent in student's primary language • Family interview/home visit • Interview with student • Student work products • Classroom observation • Teacher reports • Diagnostic teaching	Bilingual Psychologist or Language Assessor Director of Bilingual/ESL Program Guidance Counselor Classroom Teacher
Are outside factors influencing the student's performance? family trauma/crisis physical care involvement of outside agencies employment	• Family interview/home visit • Interview with student • Interview with others with assessment information	School Adjustment Counselor School Nurse Guidance Counselor
What types of effective teaching strategies are used in the classroom? communicate clearly teacher expectations provides for multisensory input/output offers a range of instructional materials employs effective behavior management matches teaching style to student need offers prompt teacher feedback assesses frequently student performance uses assessment to guide instruction	• Systematic observation of settings in which the student has difficulty • Student work products • Anecdotal records • Teacher reports • Curriculum-based assessment • Formal/informal test results	Principal Assistant Principal Department Head School Psychologist Guidance Counselor
Is the curriculum broad enough to meet the needs of diverse learners? developmentally appropriate accommodates learner diversity experientially based	• Classroom observation • Teacher reports • Curriculum-based assessment • Formal/informal test results	Principal Assistant Principal Department Head Curriculum Specialist
Do school conditions provide the learner with needed resources and supports conducive to learning? availability of support services up to date instructional materials availability of instructional technology	• Systematic observation of the school environment • Review of instructional materials • Student work products	Principal Assistant Principal Department Head Classroom Teacher

- Review the school history/record for documentation about the student's attendance, previous school performance and documentation of previously implemented regular education modifications. Review the prereferral record.
- Use criterion referenced tests to provide specific information about skill development—identifying the skills the student has learned and the skills the student has not learned. Develop portfolios of student work products to provide concrete evidence of the student's ability to perform school tasks. Use curriculum based assessment to yield information about how well the student has mastered the curriculum taught within the classroom, the rate of student learning, and whether or not the instructional strategies used have been successful.
- Use norm referenced tests to yield information about cognitive functioning and skill development in relation to a typical student at the same age/grade level.

Since the TEAM is looking at the student's ability to progress effectively in the context of regular education, assessment should focus on the individual student and his/her performance within the learning environment. Only by observing the student within and outside of the classroom will the TEAM be able to analyze and understand the student's school performance. Systematic observations of the student in a variety of settings will provide the TEAM with necessary information.

Additionally, to ensure that those factors which shape the learning experience of the student are given appropriate consideration, the TEAM needs to have an understanding of how the learning environment is structured. This information will be useful in understanding student performance as well as in identifying appropriate modifications for the student within the recommended special education program that may result from the TEAM's decision.

It must be recognized that difficulty in learning could be the consequence of the general school environment or other influences in the student's life. For example large class size, scarcity of regular education support services, linguistic/cultural differences, limited or rigid curriculum expectations, and inappropriate instructional materials will likely impede the learning process. In gathering assessment data and interpreting results, TEAM members need to consider the impact of these factors on student performance.

Special Considerations in Assessment

In some instances, assessment data will provide the evaluation TEAM with clear indications of the existence of a disability (such as a sensory impairment) and thus enable the TEAM to proceed confidently in the decision making process. In other cases, however, assessment results may prove inconclusive. At such times, the TEAM must take particular care in weighing and analyzing assessment data. As TEAM members attempt to determine whether the student has a disability, they must take into account factors unique to certain student populations that may affect the student's school performance. It is particularly important to follow the mandated evaluation safeguards designed to ensure that students from different linguistic, cultural, and socioeconomic backgrounds are not identified inappropriately as disabled. When the student being evaluated is a young child, a student from a linguistically and/or culturally different background, or a

student with a chronic health need, the TEAM's task becomes more complex. Since the developmental process, linguistic and cultural differences, and disruptions in schooling affect student learning, the TEAM must understand the implications of each as it considers the validity of assessment data.

Young Children

Young children develop skills and knowledge as they interact with the world around them. In order to understand how a young child learns, the TEAM must gather data about how the child functions within the settings that form the child's natural learning environment. Observations of the child within a play group, in a preschool setting, at solitary play, or within the family structure will provide the TEAM with the information necessary to determine whether the child is developing skills and knowledge within developmental expectations.

When considering a young child for special education, the evaluation TEAM must understand that young children develop at varying rates and according to the life experiences available to them. Information gathered about the child must be considered according to developmental expectations and the child's life experiences. Assessment data should answer the questions: Does the child present the range of skill development considered typical for a child at that age level? Has the range of the child's experiences provided the opportunity to develop age appropriate skills?

In evaluating young children with little or no school experience, the TEAM is dependent on varied sources of assessment information. While some standardized norm referenced tests may prove helpful during the evaluation process, caution should be exercised because many are not considered valid or reliable for children at this age level. Consequently, observations of the child across various settings, interviews with family members, informal tests, the results of preschool screening, and diagnostic/interactive teaching activities as well as formal assessments will yield more accurate information about the child. Because of the expertise required in working with this population, early childhood specialists coupled with the child's family will be most helpful in the evaluation process.

Students With Different Linguistic/Cultural Backgrounds

Too often, students from linguistically and/or culturally different backgrounds have been misidentified as students with special education needs. The TEAM should take care to avoid this result in conducting assessments and interpreting assessment data about students who have a different linguistic or cultural background. While regulations require the use of tests that are linguistically and culturally free of bias, sufficient unbiased assessment tools in all areas of learning do not exist. Consequently, when assessing students who come from linguistically and/or culturally different backgrounds, it is important that the TEAM understand the impact of linguistic and/or cultural differences on the learning process.

The focus of assessments should go beyond the standard determinations of oral language proficiency and cognitive ability. Those with assessment responsibility need to analyze the level of language proficiency pertinent to all aspects of school communication, as well as the influence

of different cultural experiences on learning. The following questions may prove helpful to TEAMs as they attempt to discern the impact of linguistic differences on student achievement:

- Does the student understand the primary language of classroom instruction, including the discussion of abstract concepts?
- Does the student understand written directions that accompany school tasks?
- Does the student have the ability to use written communication effectively and efficiently at an appropriate level in his/her primary language?
- Is the student able to complete English academic tasks at the same level as in his/her primary language?
- At what level are the student's interpersonal communication skills? In non-academic activities does the student tend to communicate in his/her primary language?
- Are cultural differences reflected in the student's approach to learning tasks?
- Has the student had experience with the type of learning tasks required in his/her school program?
- Does the child understand and/or feel comfortable with the culture of the school?

Students With Chronic Health Problems

Students who are experiencing chronic health problems that require medical care are frequently absent from school. The evaluation TEAM must work along with medical specialists in considering assessment data pertinent to the health concerns of the student. Issues the TEAM will need to consider include the length and consequences of the student's health problem, the effects of medication on student performance, the student's capacity to manage basic life functions, and the types of aids or assistance the student will need to perform school tasks.

Students Involved With Social Service Agencies or the Courts

When referral for special education evaluation is made by social service agencies or the courts, the evaluation TEAM must be careful in sorting through environmental factors as well as the conditions of schooling in reaching a decision about eligibility for special education. It should not be presumed that involvement with human service agencies or the courts means that a student has a disability. Nor should it be assumed that the influence of factors outside of the school environment means that a student does *not* have a disability. The same standard used to determine eligibility for students referred by school personnel and parents is applicable to these students.

Definitions

The TEAM must understand what a disability is and how it manifests itself in a student's school performance. The definitions of disability and impairments are functionally based. The definition of "to progress effectively in regular education" establishes the standard by which the TEAM is expected to judge whether a disability is affecting the student's educational performance. To progress effectively in regular education is defined in general terms in recognition of the fact

that student development and growth encompasses many knowledge and skill areas. The following terms, contained in ¶104.0 (a) and ¶104.0 (b) of the Chapter 766 Regulations, are defined as follows:

(i) Disability–One or more of the following impairments:

Developmental Delay–The learning capacity of a young child (3-8 years old) is limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; self-help skills.

Intellectual–The capacity for performing cognitive tasks, functions, or problem solving is significantly limited, impaired, or delayed and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; difficulty understanding abstract concepts.

Sensory–The capacity to see, even with correction, and/or to hear is limited or impaired and is exhibited by one or more of the following: reduced performance in visual and/or hearing acuity tasks; difficulty with written and/or oral communication; difficulty with understanding visual and/or auditory information as presented in the environment.

Neurological–The capacity of the child's nervous system is limited or impaired and is exhibited by difficulties in one or more of the following areas: the use of memory; the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions.

Emotional–The capacity to manage individual or interactive behaviors is limited, impaired, or delayed and is exhibited by difficulty which persists over time and in more than one setting in one or more of the following areas: the ability to understand, build, or maintain interpersonal relationships; the ability to react/respond within established norms; the ability to keep normal fears, concerns, and/or anxieties in perspective; the ability to control aggressive and/or angry impulses or behavior.

Communication–The capacity to use expressive and/or receptive language is limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language.

Physical–The capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement within the environment; performing basic life functions.

Specific Learning–The capacity to use one or more of the basic psychological processes involved in understanding or in using spoken or written information is limited, impaired, or

delayed and is exhibited by a significant discrepancy between achievement and intellectual ability in one or more of the following areas: listening, reading, thinking, speaking, writing, spelling, computing, calculating.

Health–The physiological capacity to function is limited or impaired and is exhibited by one or more of the following: limited strength, vitality, or alertness; difficulty in performing basic life functions.

(ii) To progress effectively in regular education–To make documented growth in the acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and the individual educational potential of the child. For the purpose of this definition, regular education includes early childhood, preschool, academic, non-academic, and vocational programs and activities.

While the definition of a school age child with special needs does not allow evaluation TEAMs to label students by disability, it does direct TEAMs to establish that the student does have a disability, consisting of one or more of the impairments defined in Chapter 766 Regulation ¶104.0. This determination will depend on the interpretation of assessment data and the evaluation TEAM's understanding of characteristics associated with specific impairments. Consequently, as TEAM members interpret assessment data they must have a common understanding of the meaning of each of the impairments contained within the definition. They must recognize that the impact of an impairment on student performance will vary from student to student, with a range of mild to severe.

For a child to be considered to have a disability, the TEAM must have gathered assessment data identifying the characteristics associated with one or more of the impairments listed in the definition of a child in need of special education. The TEAM must find that the child's capacity in the specific impairments is limited, impaired, or delayed. In addition, in the case of intellectual and physical impairment, the child's capacity must be significantly limited, impaired, or delayed. To make this determination, the evaluation TEAM should consider all of the following as indices of limited, impaired or delayed capacity:

- a pattern of difficulty that persists beyond age expectations;
- a pattern of difficulty across settings;
- a pattern of difficulty that is not solely the result of cultural, linguistic, or socioeconomic differences; and
- a pattern of difficulty that persists despite prereferral activities.

Using the definitions in conjunction with these indices will assist the TEAM in judging whether or not a student does have a disability.

The TEAM should be able to identify functional limitations that are indicative of one or more impairments contained in the regulations. Depending on the nature of the suspected disability, that task may be relatively straightforward or more complex. In some instances, the

documentation will clearly establish that a disability exists. Physical and medically related impairments generally fall within this group. In other cases, the existence of a disability will be less clear, making the focused and comprehensive nature of the assessment process even more important. This is often the case with impairments related to psychological and social functioning. Probing all sources of assessment information in such cases is essential.

The TEAM can be more conclusive in reaching a decision that a disability exists when the student's performance reflects functional limitations in more than one setting. There is further confirmation of the existence of a disability if:

- The student's school performance is below typical age expectations
- Differences in linguistic, cultural or socioeconomic background are not significant factors affecting the student's inability to progress effectively in regular education
- The student's learning difficulty has remained unchanged after the implementation of regular education modifications during the prereferral process.

Assessment information gathered from families may provide additional evidence of a disability, particularly if the student displays similar functional limitations outside of the school environment.

The Relationship Between Disability and Inability To Progress Effectively In Regular Education

In making the determination that a student requires special education, the TEAM first must find that a student has a disability. Further, the TEAM must determine that a disability alone, or in conjunction with other factors, explains why the student is unable to progress effectively in regular education. A comprehensive assessment strategy takes into account the individual attributes of the student and his/her performance within regular education. This provides the TEAM with the information necessary to reach a decision. Assessment provides the basis for answering these questions:

Does the student have a disability?

AND

Does that disability result in the student's inability to progress effectively in regular education?

Reaching a Decision About Eligibility for Special Education

Ultimately, the determination that a student is eligible for special education rests with a TEAM of professionals and parents who are responsible for conducting and interpreting assessment results. The intent of this TEAM approach is to ensure that a comprehensive picture of how the child functions within the school environment emerges and that no individual assessment or assessor determines eligibility for special education. While the roles that TEAM members assume during the evaluation and decision making process are varied as prescribed by regulation, the contributions of each are essential to the effective functioning of the TEAM process.

When the TEAM reaches the decision-making phase of the evaluation process, it must consider all of the assessment data gathered about the student's performance and the learning environment in order to reach the correct determination about the student's eligibility for special education. Table 3 provides a synopsis of the decision making process.

Close examination of a student's school history/record, systematic observation of the student in the classroom and throughout the school environment, and the input of TEAM members with expertise in the area of suspected disability should assist the TEAM in making this determination. Although the impairment definitions identify discrete functions, a student may display an array of traits that are associated with more than one impairment.

Concurrently, the evaluation TEAM should review the definition of "to progress effectively in regular education" to determine whether there is a relationship between the disability and the student's ability to progress effectively. Basically, the TEAM is analyzing the data to document that there is a discrepancy between the student's performance and his/her growth in the acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and the individual educational potential of the child. If the disability is shown to be affecting the student's ability to progress effectively in regular education, the student is eligible for special education. Examples of indices of the inability to make effective progress would include: is not performing up to expected levels on standardized, criterion-referenced, or curriculum-based assessments; will not earn promotion to the next level at the end of the school year.

To facilitate decision making, TEAM members must understand that the definition and indices of effective progress represent a continuum or baseline of achievement, and that the TEAM is to judge the referred student's performance against this standard. A student's ability to progress effectively should not be measured merely by the performance of the student's peer group. It should instead be measured by the individual student's potential and/or abilities.

As mentioned earlier, in some instances the TEAM will have more conclusive evidence of a disability because of a documented event in the student's life, e.g., an automobile accident, which has such an evident impact on the student's functional ability that the TEAM can easily find the student's ability to progress effectively in regular education will be affected. For example, a student who was making effective progress in school but suddenly sustains a severe head injury in an automobile accident would show evidence of an impairment or functional limitations affecting school performance. Even though there is no previous history of school difficulty, the TEAM can be confident in finding and should find that the head injury will affect the student's ability to make effective progress.

TABLE 3
Determining Eligibility for Special Education

Student is referred for special education evaluation.
Parent gives permission to proceed with the evaluation process.
Assessments conducted are determined by areas of suspected disability based on prereferral and referral information.

Primary questions to be answered through the assessment process:
Does the student have a disability? Does that disability result in the student's inability to progress effectively in regular education?

Assessment Of The Student

Educational History
traits of impairment
language difference
cultural background
strengths and needs
cumulative test results
previous accommodations
attendance/school record

Teacher Assessment
traits of impairment
language difference
cultural background
strengths and needs
student work products
classroom performance
formal/informal test results
curriculum approach used
classroom structure
student interview

Medical Assessment
traits of impairment
physical constraints
developmental history
medical history

Home Assessment
traits of impairment
language difference
cultural background
strengths and needs
family history/interview
developmental history
interests/outside activities
student employment
interviews with others
student interview
functioning within community
suspected area of disability

Specialist Assessment
traits of impairment
language difference
cultural background
classroom performance
rate and style of learning
student work products
formal/informal test results
student interview
diagnostic teaching
language dominance
strengths and needs
rate and style of learning
suspected area of disability

Psychological Assessment
traits of impairment
language difference
cultural background
strengths and needs
student interview
student work products
classroom performance
formal/informal test results
social/emotional development
language dominance
student interview

Decision Making

Does the student have a disability? **AND** Does that disability result in the student's inability to progress effectively in regular education?

To answer yes to this question, **the evaluation TEAM should consider all of the following as indices of limited, impaired, or delayed capacity** as they gather and interpret assessment data:

- a pattern of difficulty that persists beyond age expectations
- a pattern of difficulty across settings
- a pattern of difficulty that is not solely the result of cultural, linguistic or socioeconomic differences
- a pattern of difficulty that persists despite prereferral activities

No. The TEAM determines a finding of no special needs.

Yes. The student is eligible for special education. An IEP is developed that meets the unique needs of the student and recommends placement in the Least Restrictive Environment.

IV. Making Placement Decisions for Students With Special Needs

Determining eligibility for special education is only one of the responsibilities of an evaluation TEAM. Of equal importance is the TEAM's obligation to develop an Individualized Educational Plan (IEP) that accommodates the unique needs of the student while it provides for needed services within the Least Restrictive Environment. This requires the TEAM to identify the desired outcomes of special education services so that those responsible for providing instruction can shape curriculum and instruction to meet the needs of the learner. It also requires the TEAM to seek program options that will maximize the student's opportunity to be educated with his/her nondisabled peers.

The TEAM should establish goals and objectives that will provide focus and direction for service providers as they structure the educational program of the student. Specifically, the IEP should provide a blueprint that delineates the skills and knowledge that are the intended outcomes of instruction. Such an outcome-based approach will increase the efficiency of instruction, ensure that instruction is targeted to the special needs of the student, and provide a basis for assessing program effectiveness. Also, it will establish an understanding of what the recommended special education services are intended to accomplish.

Placement in the Least Restrictive Environment is not merely a legal mandate; it reflects an educational philosophy that endorses the inclusion of all students in the life of the school. In identifying the service delivery system that will ensure placement in the least restrictive environment, the TEAM must consider options for providing special education and/or other support services and/or aids in the regular classroom. Chapter 71B, section 1, defines least restrictive environment as follows:

> ". . . the educational placement that assures that, to the maximum extent appropriate, children with special needs, including children in public or private institutions or other care facilities, are educated with children who do not have special needs, and that special classes, separate schooling, or other removal of children with special needs from the regular educational environment occur only when the nature or severity of the special needs is such that education in regular classes with the use of supplementary aids or services cannot be achieved satisfactorily."

A Department of Education technical assistance paper entitled, *A Focus on Integration: Including All Students,* provides a discussion of the benefits of integration along with descriptions of sound integration practices.

Entitlement Under Section 504 of the Rehabilitation Act

A student with a disability may be entitled to services even if he/she has been deemed ineligible for special education under the criteria described above. For example, a student may have a physical impairment, such as cerebral palsy, but be progressing effectively in regular education. In this instance, the student would not be considered eligible for special education because

he/she meets only one of the criteria necessary for enrollment in special education. However, the student may be entitled to services under Section 504 of the Rehabilitation Act of 1973, and its implementing regulations 34 CFR 104.1 *et sq*.

Independent of Chapter 766, Section 504 of the federal Rehabilitation Act of 1973 applies to students who have a physical or mental impairment that substantially limits a major life activity such as caring for oneself or performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working. A student who has a record of such an impairment or who is regarded as having such an impairment is also "an individual with handicaps."

Section 504 entitles a student who is an "individual with handicaps" to special or regular education and related services designed to meet his or her individual needs. It also ensures that the needs of students without disabilities are met. In addition, school districts must ensure that students with disabilities have meaningful opportunities to participate in all aspects of school on an equal basis with students without disabilities. Depending upon the student's individual needs, a school district may be required to provide specialized instruction, modifications to the curriculum, accommodations in non-academic and extra curricular activities, adaptive equipment or assistive technology devices, an aide, assistance with health-related needs, school transportation, or other related services and accommodations. In addition, school districts are responsible for providing programs and activities that are accessible to students with disabilities.

V. Conclusion

Throughout the evaluation process, it is imperative that TEAM members recognize the serious nature of making a determination that a student is a "child with special needs". It is, perhaps, the single most important educational decision that professionals and parents can make about a child. If a student is determined to have a disability, it does not mean the student is less able or less valued as a person. Nor does the existence of a disability equate to school failure, limit educational opportunities, or drive placement decisions. The singular purpose for determining that a student has a disability is to increase the educational opportunities available to that student so that he/she progresses through school. The responsibility of the evaluation TEAM is to ensure that each student receives the most appropriate educational program in the Least Restrictive Environment.

APPENDIX A
Regular Education Resources

Department of Education Technical Assistance Papers

A Focus on Ability Grouping

A Focus on Discipline and Attendance

A Focus on Grade Retention

A Focus on Instructional Improvement

A Focus on Integration: Including All Students

Building Community Support

Educating the Whole Student: The School's Role in the Physical, Intellectual, Social and Emotional Development of Children

Family Involvement in Education: Documentation of a Mini-Summit

Focus on Parents: Strategies for Increasing the Involvement of Underrepresented Families in Education

Teacher Support Teams: Meeting the Challenge of At-Risk Students in Regular Education

Young Lives: Many Languages, Many Cultures

Resources for Prereferral

Dunn, R., & Dunn, K. (1992). *Teaching elementary students through their individual learning styles: Practical approaches for grades 3-6.* Boston: Allyn and Bacon.

Fagan, S.A., Graves, D.L., & Tessier-Switlick, D. *Promoting successful mainstreaming: Reasonable classroom accommodations for learning disabled students.* Rockville: Montgomery County Public Schools.

Graden, J.L., Casey, A., & Christenson, S.L. (1985). *Implementing a prereferral intervention system: Part I, the model. Exceptional Children. 51*(5), 377-384.

Graden, J.L., Casey, A., & Bonstrom,O. (1985). *Implementing a prereferral system: Part II, the data. Exceptional Children. 51*(6), 487-496.

Hayek, R. A. (1987). *The teacher assistance team: A prereferral support system. Focus on Exceptional Children.* 20 (1)

Massachusetts Department of Education. (1990). *Teacher support teams: meeting the challenge of at-risk students in regular education.* Quincy: Division of School Programs and Division of Special Education.

APPENDIX B
Assessment Responsibilities as Prescribed in Chapter 766 Regulations

320.2 (a) (i)

Specialist Assessment(s): Assessments by one or more specialists in all areas related to the child's suspected need for special education and related services, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, communicative status and motor abilities. Each specialist conducting an assessment shall be trained in the area of suspected need, and shall give the child a professionally sound, complete, and suitably individualized examination or assessment, in the context of the child's physical, developmental, social, emotional, and educational history and current circumstances. Specialist assessments may include, but are not limited to, those assessments described in ¶320.2 (b)).

320.2 (a) (ii)

Educational Status Assessment: An assessment of the child's educational status by an administrative representative of the school department. Such assessment shall include a history of the child's education, an overview of the child's school progress, and a statement of the child's current standing.

320.2 (a) (iii)

Teacher Assessment: An assessment by a teacher who recently had or currently has the child in a classroom or other teaching situation. Such assessment shall include: an analysis of child's specific abilities along a developmental continuum, with comparison of those abilities to the tasks which are contained in the regular education program; a statement of the child's academic functioning or achievement; and, a statement of the child's behavioral adjustment, attentional capacity, motor coordination, activity levels and patterns, communication skills, memory and social relations with groups, peers and adults.

320.2 (b)

Any or all of the following assessments shall also be performed if requested by the parent.

320.2 (b) (i)

Health Assessment: A comprehensive health assessment by a physician which identifies medical problems that may affect the child's education, such as physical constraints, chronic illness, neurological and sensory deficits, and developmental dysfunction, in addition to any procedures required by the regulations of the Department of Public Health. The health assessment shall be

reviewed by the school nurse and any additional relevant health information shall be added from the child's school health records.

320.2 (b) (ii)

Psychological Assessment: An assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, based upon the child's developmental and social history; observation of the child in familiar surroundings (such as a classroom); sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to their maturity, integrity, and dynamic interaction within the education context.

320.2 (b) (iii)

Home Assessment: An assessment by a nurse, psychologist, social worker, guidance or adjustment counselor, or teacher, of pertinent family history and home situation factors including, with prior written parental consent, a home visit. This assessment shall include a description of pertinent family history and individual developmental history and estimates of adaptive behavior at home, in the neighborhood and in local peer groups. Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation of the child or direct interview of the child in the neighborhood setting.

320.3

Written Documentation: Each person conducting as assessment in accordance with ¶320.1 and ¶320.2 shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the child's needs, offering explicit means of meeting them. Summaries of such assessments shall be made available to parents as provided in ¶319.0.

320.4

Waiver of Assessment: An individual assessment may be waived with the approval of the parent, if an equivalent assessment has been completed and if the person conducting the school assessment determines that the assessment results still accurately reflect the child's aptitude or achievement level or whatever other factors the assessments purports to measure. Such a waiver shall occur if the assessment is made available to the school and if the person who conducted the equivalent assessment (or the designee of such person) agrees to attend meetings of the TEAM. The attendance of such person shall be paid by the school committee if the school committee requests such attendance or by the parent if such attendance is requested by the parent and is not requested by the school committee.

APPENDIX C
Evaluation Safeguards

While the formal process of evaluation is not exclusively dependent upon the use of formal testing to gather data about the school performance of students, section 320.1 of the Chapter 766 Regulations identifies evaluation safeguards to be followed in the event that tests are a part of the evaluation process and read as follows:

320.1

The evaluation conducted pursuant to ¶319.0 shall be made by a multidisciplinary team and shall consist of assessments adapted to the age of the child being evaluated. For children being transitioned from early intervention programs, school committees are encouraged to use current and appropriate assessments from early intervention teams, whenever possible, to avoid duplicating testing. The school committee shall also ensure that the evaluation meets the following requirements:

320.1 (a)

Tests have been validated for the specific purpose for which they are used.

320.1 (b)

Tests are administered and interpreted by trained persons specifically qualified to administer and interpret them, and who do so in conformity with the instructions provided by their producers.

320.1 (c)

Testing procedures include tests and other evaluative materials tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

320.1 (d)

Tests and evaluative materials are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

320.1 (e)

Tests and evaluative materials are as free as possible from cultural and linguistic bias and have been separately evaluated with reference to the cultural and linguistic groups to which the child belongs.

320.1 (f)

Tests and other evaluative materials are provided in the child's native language or other mode of communication unless clearly not feasible to do so. In addition, if the primary language of the home is other than English, all screening and evaluation, including the conferences and meetings with the parents and child which are part of the screening and evaluation process, shall be conducted in such primary language. If a person fluent in the primary language of the home is unavailable, the school committee shall utilize the services of an interpreter oriented to the procedures and objectives involved in the particular part of the screening and evaluation process.

320.1 (g)

Whenever testing of the child is required or permitted by these regulations, the results of standardized or local tests of ability, aptitude, affect, achievement, aspiration or projective personality tests are not used exclusively or principally as the basis for any finding or conclusion.

320.1 (h)

No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

320.1 (i)

The Department shall periodically review the tests and testing procedures used by the various school committees to ensure conformity with the requirements of this paragraph.

320.2 (a)

The child shall be assessed in all areas related to the child's suspected need for special education and related services. Such assessments are referred to in these regulations as "specialist assessments". Each child shall receive an educational status assessment and a teacher assessment as defined herein.

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